

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
MINUTES

January 29, 2016

The meeting of the Arizona Prosecuting Attorneys' Advisory Council was called to order by the Vice Chair Brad Carlyon on Friday, January 29, 2016, at 1:00 p.m. at the APAAC office located at 1951 W. Camelback Road, Suite 202, in Phoenix, Arizona.

COUNCIL MEMBERS PRESENT

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| Sheila Polk | APAAC Chair, Yavapai County Attorney <i>(at 1:05 p.m.)</i> |
| Brad Carlyon | APAAC Vice-Chair, Navajo County Attorney |
| Brad Beauchamp | Gila County Attorney |
| John Belatti | Mesa City Prosecutor |
| Ryan Glover | Glendale City Prosecutor (telephonic) |
| Vicki Hill | Acting Phoenix City Prosecutor |
| Brian McIntyre | Interim Cochise County Attorney |
| Marc Miller | Dean, University of Arizona College of Law |
| Derek Rapier | Greenlee County Attorney (telephonic) |
| Tony Rogers | La Paz County Attorney |
| David Rozema | Coconino County Attorney (telephonic) |
| Tobin Sidles | Oro Valley Town Prosecutor |
| Jon Smith | Yuma County Attorney (telephonic) |
| Matt Smith | Mohave County Attorney (telephonic) |
| Lando Voyles | Pinal County Attorney |

COUNCIL MEMBERS PRESENT BY PROXY

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| Mark Brnovich | Arizona Attorney General Proxy Paul Ahler |
| David Byers | Arizona Supreme Court Administrative Director Proxy Jerry Landau <i>(at 1:25 p.m.)</i> |
| Barbara LaWall | Pima County Attorney Proxy Kathleen Mayer |
| Alan Merritt | Tucson City Prosecutor Proxy William Mills (telephonic) |
| Bill Montgomery | Maricopa County Attorney Proxy Mark Faull (telephonic) |
| Michael Whiting | Apache County Attorney Proxy Sheila Polk <i>(at 1:05 p.m.)</i> |

STAFF PRESENT

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| Elizabeth Ortiz | Executive Director |
| Kim MacEachern | Staff Attorney |
| Diana Cooney | Office Manager |

GUESTS PRESENT

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| Rachel Caldwell | APAAC Legislative Extern; ASU O'Connor College of Law |
| Jennifer Hancock | Extern, Arizona Supreme Court-AOC <i>(at 1:25 p.m.)</i> |
| Chris Michalsky | APAAC Law Clerk; Arizona Summit School of Law |

CONSENT AGENDA

Mr. Brad Carlyon presented the consent agenda, including minutes from the January 15, 2016, Council meeting, for approval. Mr. Tobin Sidles made a motion, seconded by Mr. John Belatti, to approve the consent agenda. Motion carried.

EXECUTIVE DIRECTOR'S REPORT

Ms. Elizabeth Ortiz reported that APAAC will host a mock oral argument on February 8, 2016, for the Pinal County Attorney's Office as they prepare for oral argument before the Arizona Supreme Court in the matter of *State v. Georgini* on February 10, 2016. Mr. Lando Voyles provided an overview of the case.

(At 1:05 p.m., APAAC Chair, Ms. Sheila Polk, arrived at the meeting from a previous teaching engagement to facilitate the remaining agenda.)

Ms. Ortiz reminded Council members that conflict cases within their respective jurisdictions can be referred to APAAC for handling by its staff or for coordinating with another Council agency.

Ms. Ortiz announced that the Association of Prosecuting Attorneys (APA) held its Winter 2016 Major County Prosecutors Council Meeting in Phoenix on January 28-29, 2016. Topics for discussion at the meeting included law enforcement use of force and body worn cameras. In conjunction with the APA meeting, Taser International, a Scottsdale-based firm, hosted an informational event on January 28, 2016, which was attended by Ms. Ortiz and Mr. Bill Montgomery and others from the Maricopa County Attorney's Office.

Ms. Ortiz, along with Mr. Jon Smith, both serve on the Commission for Prevention of Violence Against Women. Ms. Ortiz also serves on the Commission's Victim Services subcommittee, which recently met to discuss how to improve communication between its relevant partners.

ARIZONA SEXUAL ASSAULT EVIDENCE COLLECTION KIT TASK FORCE

Ms. Barbara LaWall, Mr. Montgomery, and Ms. Polk were asked to serve on Governor Ducey's newly established Arizona Sexual Assault Evidence Collection Kit Task Force, whose duties include developing statewide standardized testing and tracking protocols for the sexual assault kits, determining/identifying the location of all untested kits, providing legislative recommendations for a process moving forward, developing an ongoing continuing education plan, and providing recommendations for a funding source to clear the backlogs. Ms. Polk inquired which agencies, in addition to Maricopa County Attorney's Office, acknowledge a backlog of untested sexual assault kits. No other backlogs were reported.

APAAC LIFETIME ACHIEVEMENT IN PROSECUTION AWARD

Based on Council feedback, Ms. Ortiz presented for consideration and approval the proposed new language for APAAC's Lifetime Achievement in Prosecution Award. Ms. Polk recommended revising the proposed language to read "current and past *heads* of Arizona prosecution offices." Mr. Sidles made a motion, seconded by Ms. Kathleen Mayer, to accept the proposed changes to the Lifetime Achievement Award, as revised. Motion carried.

FINANCE COMMITTEE REPORT

Mr. Derek Rapier presented APAAC's financial reports for November 2015 and December 2015, as previously reviewed and recommended for approval by APAAC's Finance Committee. Mr. Rapier made a motion, seconded by Mr. Brian McIntyre, to accept the financial reports. Motion carried.

LEGISLATIVE POLICY COMMITTEE REPORT

Mr. Jon Smith reported the Legislative Policy Committee (LPC) made recommendations for the following bills and suggested the Council vote on every item within one group at the same time:

A. Support:

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| HB2375 | Crimes Victims' Rights; Facility Dogs |
| HB2376 | Victim Restitution; Stipulated Amount; Hearing |
| HB2419 | Stalking; Offense' Definitions |
| HB2451 | Release of Prisoners; Detainers; Repeal |
| HB2462 | Domestic Violence Service Providers |
| HB2468 | Internet Crimes Against Children; Approp |
| HB2488 | Sexual Assault; Parental Rights; Prohibition |
| HCR2008 | Day of Remembrance; Murder Victims |
| HCR2019 | Medical Marijuana |
| SB1104 | Medical Examiner; Jurisdiction; Death Reporting |
| SB1126 | Prisoner Transition Program; Eligibility; Termination |
| SB1128 | Domestic Violence Offenders; Firearms; Seizure |
| SB1132 | Executive Clemency Board; Salary; Duties |
| SB1143 | Internet Crimes Against Children; Approp |
| SB1159 | Juvenile Commitment; Dependent; Incurable Children |
| 13-1405 | Sex Offender Registration- Young Adults (APAAC Bill) (HB2539) |
| 13-3827 | Internet Sex Offender Website; Offenses (APAAC Bill) (SB1286) |
| MCAO | Public Records Law Enforcement |

Mr. Mark Faull requested to strike HCR2019 from the "Support" list, stating Mr. Montgomery's position to oppose any medical marijuana bill regardless of its intent. Ms. Polk noted that the bill was reportedly dead for this session. Ms. Mayer made a motion, seconded by Mr. Sidles, to accept the LPC's recommendation for Council to **Support** bills under Agenda Item VIII (A), with the exception of HCR2019 which was stricken from the list. Motion carried. Ms. MacEachern noted that bill numbers had been assigned to the last two APAAC bills in the list.

B. Oppose

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| HB2013 | Information Technology; Transfer; Title 18 |
| HB2024 | Sovereign Authority; Federal Actions |
| HB2042 | Nunchaku Prohibition; Repeal |
| HB2349 | Incorrigible; Dependent Children; Juvenile Commitment |
| HB2369 | Forfeiture; Criminal Conviction; Procedures; Remedies |
| HB2377 | Criminal Sentencing; Restoration of Rights |
| HB2393 | Hiring Practices; Criminal History; Limitation |
| HB2406 | Cannabis; Regulation; Taxation |
| HB2420 | Unlawful Flight from Law Enforcement |
| HB2446 | Prohibited Weapon; Definition; Exclusions |
| HB2463 | Reporting Abuse; Experts; Liability; Indemnification |
| HB2464 | Witnesses; Health Care Providers; Subpoenas |
| SB1057 | Crimes; Culpable Mental State; Requirement |
| SB1135 | Texting While Driving; Transportation Vehicles |
| SB1257 | Misconduct Involving Weapons; Public Places |

Mr. Voyles made a motion, seconded by Ms. Mayer, to accept the LPC's recommendation to **Oppose** the bills listed under Agenda Item VIII (B). Discussion followed. Mr. Carlyon made a friendly amendment to pull HB2377 from the list of opposed bills as it has been amended and return it and other amended bills to LPC, to reassess APAAC's position. Mr. Voyles and Ms. Mayer accepted the friendly amendment. Motion carried, with Mr. Landau abstaining.

C. Neutral

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| HB2072 | Firearms; University; College; Campus |
| HB2073 | Unmanned Aircraft Systems; Unlawful Use |
| HB2246 | Animal Cruelty; Adequate Shelter |

Mr. Carlyon made a motion, seconded by Ms. Mayer, for Council to accept the LPC's recommendation to take a **Neutral** position on the bills listed under Agenda Item VIII (C). Discussion followed. Ms. Kim MacEachern clarified that the "neutral" position allows APAAC to sign in at legislative committees and to speak or provide information if requested. Mr. Faull further clarified that "neutral" has historically denoted that APAAC has no real consensus or even competing views among its members. Mr. Landau suggested the Council consider moving HB2072 to an "information only" position. Mr. McIntyre made a friendly amendment, seconded by Mr. Sidles, to move HB2072 from a neutral position to an information only position. Mr. Carlyon and Ms. Mayer accepted the friendly amendment. Motion carried, as amended.

D. Information Only

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| HB2030 | Liquor Premises; Firearms; Retired Officers |
| HB2032 | Speed Limits; Local Authority |
| HB2034 | DPS; Schools; Clearance Cards; Notifications |
| HB2059 | DCS Information; Governor Access |
| HB2061 | Medical Marijuana; Pregnancy Exclusion |

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| HB2091 | Firearm Sales; Transfers; Background Checks |
| HB2072 | Firearms; University; College; Campus (moved from Neutral) |
| HB2183 | Inmate Body Scans; Contraband |
| HB2199 | Unlawful Use; Booking Photos; Information |
| HB2204 | Salvia Divinorum; Unlawful Acts; Defense |
| HB2219 | Supreme Court; Attorney Licensing |
| HB2220 | Firearms; State Preemption; Independent Contractors |
| HB2221 | Attorney Regulation; Assessments; Membership Dues |
| HB2223 | Prohibited Money Transfers; Information Sharing |
| HB2330 | Crimes Against Livestock; Poultry; Animals |
| HB2347 | End-Of-Life Decisions; Terminally Ill |
| HB2379 | Tech Correction; Superior Court Records |
| HB2395 | Collection Agencies; Unlawful Acts |
| HB2405 | Medical Marijuana; Cultivation; Facilities |
| HB2426 | Disorderly Conduct |
| HB2466 | Electronic Legal Material |
| HB2500 | Unlawful Practices; Auto Glass Repair |
| HB2515 | Prisoner Education Services Budget, Uses |
| HCM2003 | Transparency; State Bar; Member Dues |
| HCR2007 | Firearm Sales; Transfers; Background Checks |
| HCR2018 | Post- Traumatic Stress Injury Awareness Day |
| HCR2022 | Death Penalty; Prohibition |
| HCR2024 | Ballot Measures; Controlled Substance; Supermajority |
| HCR2028 | Election of Judges; Terms |
| SB1018 | Aid; Execution of Process; Injury |
| SB1026 | Immigration; Law Enforcement; Repeal |
| SB1033 | Voting Rights; Restoration; Felonies |
| SB1039 | Jury Service; Eight-Year Exemption |
| SB1054 | Law Enforcement Activity; Recording Prohibition |
| SB1061 | Process Servers; Motor Vehicle Records |
| SB1106 | Food Stamp Benefits; Unlawful Use |
| SB1127 | Capital Punishment Study Committee |
| SB1129 | Death Penalty; Repeal |
| SB1166 | Service Animals; Certification; Registration; Identification |
| SB1168 | Continuous Smuggling; Criminal Act |
| Pima | Domestic Violence Firearms Recovery Orders (Support HB2462) |
| Pima | Mental Health Firearms Restraining Orders and Firearm Recovery |

Ms. MacEachern stated that Pima County's bill "Domestic Violence Firearms Recovery Orders" has been assigned bill number SB1128; which the Council voted to support in Agenda Item VIII(A) list above and, therefore, can be stricken from the (D) list. Mr. Belatti made a motion, seconded by Mr. McIntyre, to accept the LPC's recommendation of **Information Only** for the bills listed under Item VIII (D). Motion carried.

BEST PRACTICES COMMITTEE REPORT

Mr. Sidles reported the Best Practices Committee met on January 25, 2016, to begin finalizing the training sessions for APAAC's 2016 Annual Prosecutor Conference. Mr. Sidles referred Council to the seminar report attachment showing APAAC-sponsored trainings and their respective attendance numbers for December 2015. The January 2016 report included WYDM - Lessons from the Holocaust classes, which provide ethics training for attendees.

CRIMINAL JUSTICE REVIEW WORKING GROUP REPORT

Ms. Polk reported that APAAC's Criminal Justice Review Working Group met on January 19, 2016, and will continue its work when it reconvenes after the end of the current legislative session.

NACo / AACo REPORT

Mr. Voyles recently attended an AACo Board meeting, where they discussed supporting SB1026, which repeals the current law requiring illegal citizens to serve only 50% of their sentence. The new law would require illegal citizens to serve full sentence terms.

NDAA REPORT

Mr. Rapier reported that Ms. Ortiz, Mr. Voyles, and Mr. Austin Hoopes from the Pinal County Attorney's Office are scheduled to attend the National District Attorney Association's (NDAA) Capital Conference in Washington, DC, from February 2-4, 2016. APAAC arranged for the group to meet with Arizona's congressional delegation. Mr. Rapier plans to attend the NDAA Board Meeting scheduled on March 17-19, 2016, in conjunction with its Spring Conference in Tucson, AZ. The NDAA Summer Conference will be held in Boston, MA, on July 17-19, 2016.

CALL TO THE PUBLIC

Mr. Landau reminded Council a bill has dropped in the current legislative session that would provide numerous changes by constitutional amendment to the Public Safety Personnel Retirement System (PSPRS) statutes. The bill would replace the PSPRS permanent benefit clause with a COLA increase. The resolution must pass and be submitted to the Secretary of State if it is to be placed on a May 17 special election.

Mr. Tony Rogers thanked APAAC for its continued support of La Paz County in handling its conflict cases, including a preliminary hearing in a recent case that allowed Ms. Ortiz less than 48 hours to prepare and travel to La Paz County for an early court appearance.

Ms. MacEachern encouraged Council members and their staff to attend the Problem Solving Court Conference scheduled on April 25-27, 2016 in Prescott, Arizona.

Ms. MacEachern reminded Council that on February 17, 2016, she and Mr. Jon Eliason of the Maricopa County Attorney's Office are co-presenting a *Brady v. Maryland* webinar for JusticeClearinghouse.com, provided free-of-charge to all state prosecutors through APAAC's paid subscription membership.

NEXT COUNCIL MEETING

The next Council meeting is scheduled for Friday, February 12, 2016, at 1:00 p.m. at the APAAC office.

ADJOURNMENT

Ms. Polk declared the meeting adjourned at 1:54 p.m.